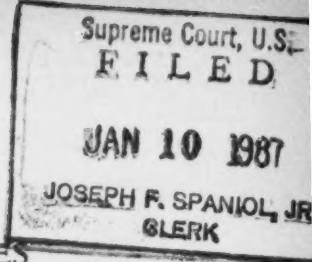


NO. 86-903

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986



CESARIO ZARTUCHE,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE APPELLATE COURT OF ILLINOIS,
FIRST DISTRICT, FIRST DIVISION

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Whether the Illinois Appellate Court properly applied this Court's decision in Illinois v. Gates, 462 U.S. 213, 104 S.Ct. 885 (1983), in concluding that under the totality of the circumstances there was a substantial basis for the trial court's finding of probable cause, where the information provided by the informant was substantially corroborated by independent police investigation which included three controlled drug purchases at Petitioner's home, a report from a local drug enforcement agency indicating that the informant was observed entering Petitioner's home prior to another recent controlled drug purchase, and information that Petitioner

had previously been arrested on a drug-related charge after a search warrant was executed in his home.

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IV.

THE ILLINOIS APPELLATE COURT PROPERLY APPLIED THIS COURT'S DECISION IN ILLINOIS V. GATES, 462 U.S. 213, 104 S.Ct. 2085 (1983), IN CONCLUDING THAT UNDER THE TOTALITY OF THE CIRCUMSTANCES THERE WAS A SUBSTANTIAL BASIS FOR THE TRIAL COURT'S FINDING OF PROBABLE CAUSE WHERE THE INFORMATION PROVIDED BY THE INFORMANT WAS SUBSTANTIALLY CORROBORATED BY INDEPENDENT POLICE INVESTIGATION WHICH INCLUDED THREE CONTROLLED DRUG PURCHASES AT PETITIONER'S HOME, A REPORT FROM A LOCAL DRUG ENFORCEMENT AGENCY INDICATING THAT THE INFORMANT WAS OBSERVED ENTERING PETITIONER'S HOME PRIOR TO ANOTHER RECENT CONTROLLED DRUG PURCHASE, AND INFORMATION THAT PETITIONER HAD PREVIOUSLY BEEN ARRESTED ON A DRUG-RELATED CHARGE AFTER A SEARCH WARRANT WAS EXECUTED IN HIS HOME..... 15

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IN THE
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OCTOBER TERM, 1986

CESARIO ZARTUCHE,

Petitioner,

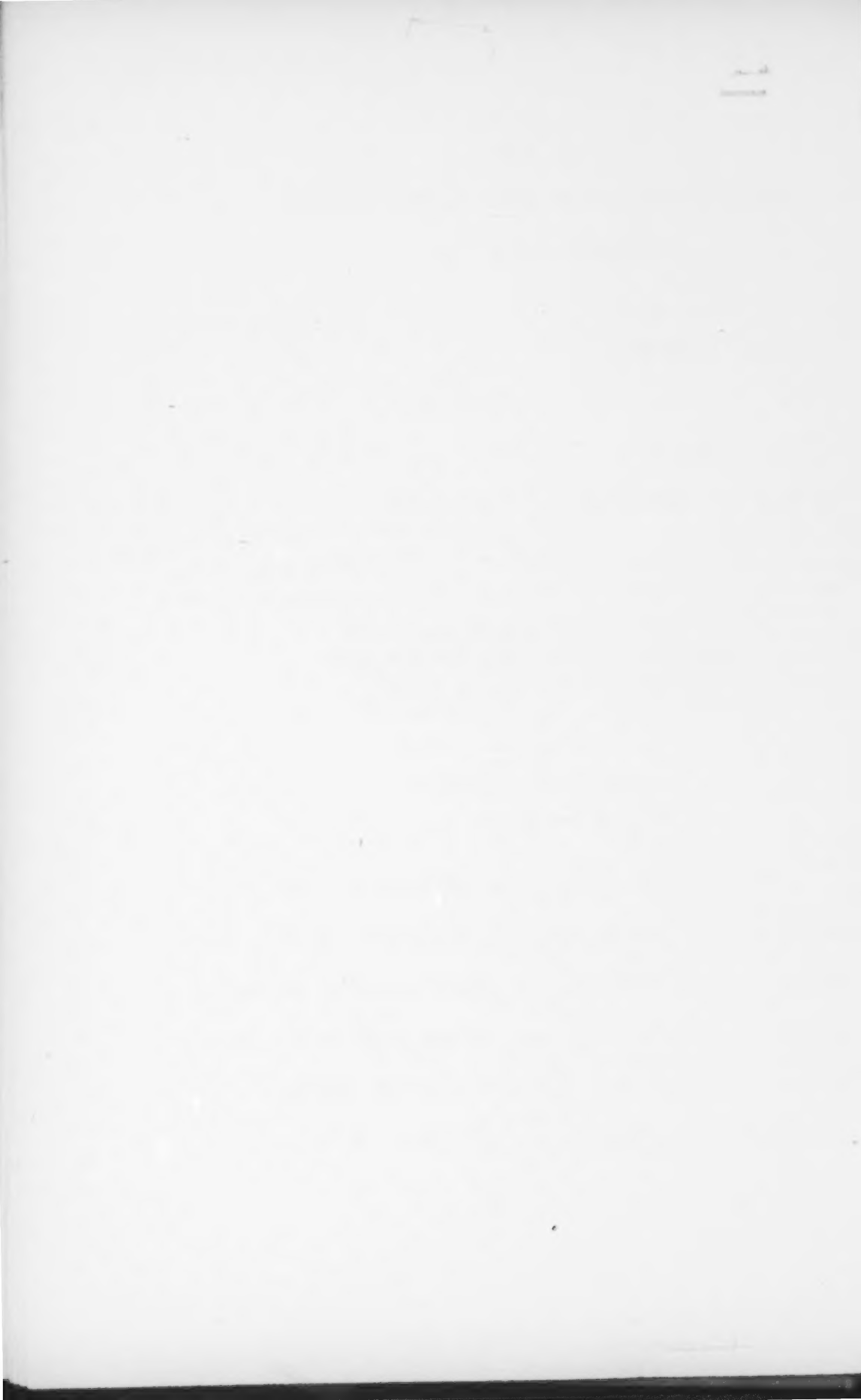
vs.

PEOPLE OF THE STATE OF ILLINOIS,
Respondent.

ON PETITION FOR A WRIT OF
CERTIORARI TO THE APPELLATE
COURT OF ILLINOIS, FIRST
DISTRICT, FIRST DIVISION

OPINION BELOW

The Petitioner was convicted of possession of more than fifteen grams of heroin with intent to deliver and possession of more than ten grams but less than thirty grams of cocaine with intent to deliver in violation of Ill. Rev. Stat.



1981, ch. 56½, pars. 1401(a)(1) -1408 and 1401(b) -1408, respectively. Petitioner was sentenced to concurrent seven-year terms of imprisonment and was fined \$2,000 and assessed \$70 in court costs. The judgment and sentence of the Circuit Court were affirmed by the Illinois Appellate Court in an unreported opinion which is attached in the Appendix of Petitioner's Petition for Writ of Certiorari. The Illinois Appellate Court subsequently denied Petitioner's petition for rehearing in an unreported opinion which is also attached in the Appendix of Petitioner's Petition for Writ of Certiorari. Petitioner's petition for leave to appeal to the Illinois Supreme Court was denied on October 2, 1986.



JURISDICTION

Petitioner has filed a timely petition for a Writ of Certiorari and this Court's jurisdiction has been properly invoked pursuant to 28 U.S.C. 1257 (3).

STATEMENT OF THE CASE

Petitioner, Cesario Zartuche, was arrested and subsequently indicted for possession of more than fifteen grams of heroin with intent to deliver and possession of more than ten grams but less than thirty grams of cocaine with intent to deliver in violation of Ill. Rev. Stat. 1981, ch. 56½, pars. 1401 (a) (1)-1408 and 1401(b)-1408, respectively. (R. C146-147a). Prior to trial, Petitioner filed a motion to quash the search warrant and suppress evidence which was heard and denied by a

trial judge in Cook County, Illinois. (R. C 144-145; R. 1-38) After a stipulated bench trial, Petitioner was found guilty of the aforementioned charges and subsequently sentenced to concurrent seven-year terms of imprisonment and was fined \$2,000 and assessed \$70 in court costs. (R. 102-121) Petitioner's convictions and sentence were affirmed by the Illinois Appellate Court in an unreported decision which is attached in the Appendix of Petitioner's petition for writ of certiorari. The Illinois Appellate Court subsequently denied Petitioner's petition for rehearing in an unreported decision which is also attached in the Appendix of Petitioner's petition for writ of certiorari. Petitioner's petition for leave to appeal to the Illinois Supreme Court was denied on October 2, 1986. Petitioner now brings this petition for a writ of certiorari arguing that the Illinois

court misconstrued this Court's decision in Illinois v. Gates, 462 U.S. 213, 103 S.Ct. 2317 (1983).

On October 16, 1982, Detective George Sintic of the Chicago Heights Police Department, and John Doe, an anonymous informant, appeared before an Illinois trial judge and signed a search warrant complaint to search the premises located at 1315 Park Avenue, Chicago Heights, Illinois, and the person of Petitioner, Cesario Zartuche. (R. C133-139). The object of the search was heroin, items used in the sale, manufacture and distribution of heroin, proof of residence, and all recorded United States currency of the Chicago Heights Police Department. (R. C133)

In summary, the complaint for the search warrant contained the following averments. On October 4, 1982, Detective



George Sintic met with and had a conversation with John Doe, an anonymous informant, in the Chicago Heights area. (R. C133) Detective Sintic had known Doe for approximately three months, during which time Doe had given Detective Sintic valuable "street" information on numerous occasions. (R. C133) During the conversation on October 4, Doe, who had been a user of heroin for the past six months and was familiar with heroin effects, advised Detective Sintic that on the same date Doe had attempted to purchase heroin from a third person, Richard Claus. (R. C133-134) According to Doe, Claus informed Doe that he (Claus) had to go to Cesario Zartuche's (known as Chalo) home to purchase the heroin. (R. C134) Together, Doe and Claus drove to the area of 13th Street and Park Avenue, Chicago Heights, Illinois, where Claus exited Doe's vehicle and walked

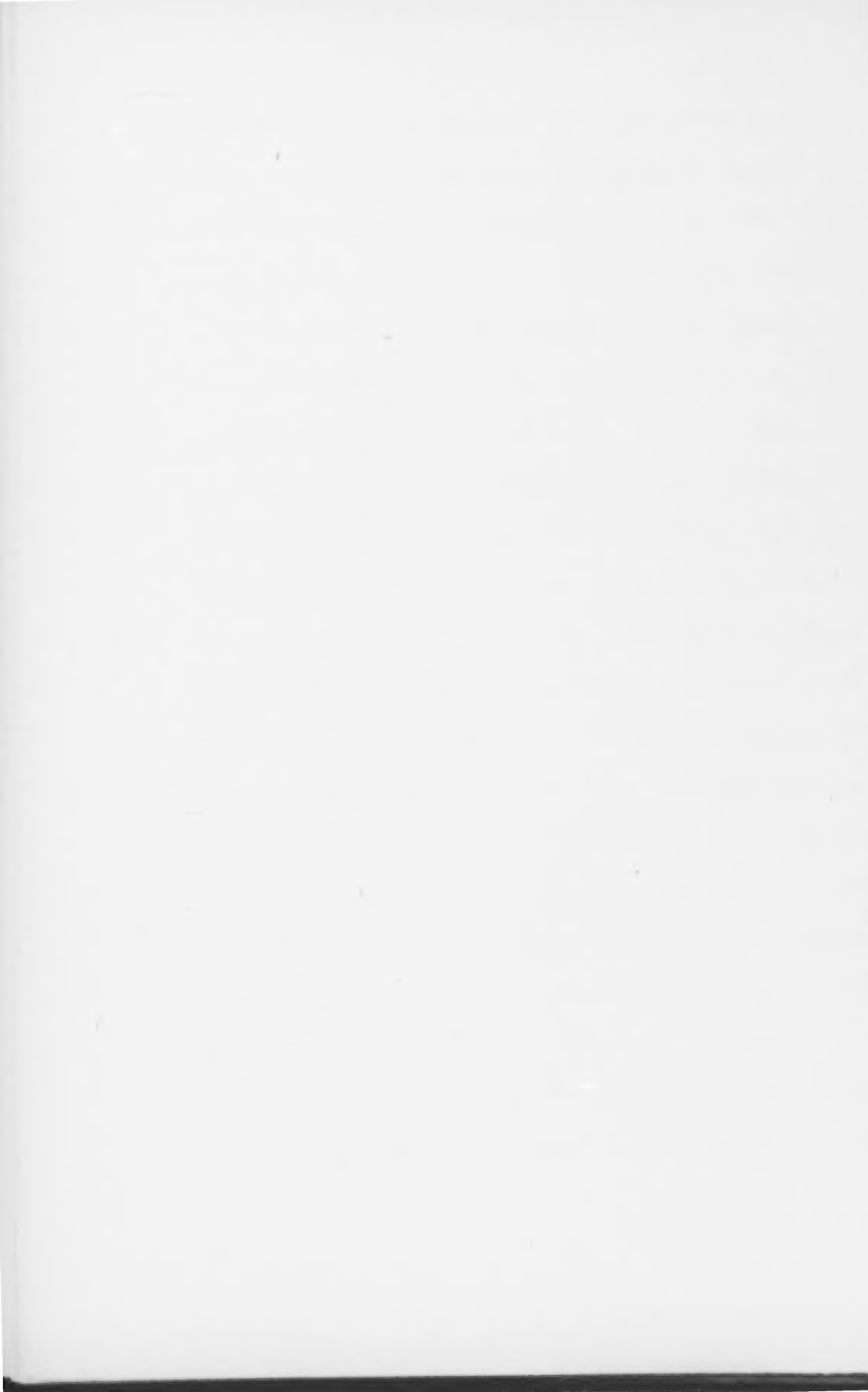


toward the Southeast corner of 13th Street and Park Avenue out of Doe's view. (R. C134) Moments later, Claus returned to Doe's vehicle, entered, and handed Doe a tin foil packet containing a beige powder substance that Claus claimed was heroin. (R. C134) According to Doe, Doe ingested a quantity of the heroin and received physical sensations similar to previous consumptions of heroin. (R. C134) Claus advised Doe that anytime Doe wanted anything, to come to him (Claus), because "Chalo" (Cesario Zartuche) had the best dope in town (R. C134)

Three controlled purchases were subsequently conducted. On the first occasion, October 5, 1982, Detective Sintic met with Doe in the Chicago Heights area. (R. C134) At this location, Detective Sintic had Doe's person and vehicle searched,

finding both free of monies and contraband.
(R. C134) Thereafter, Detective Sintic gave Doe \$75.00 pre-recorded Chicago Heights Police Funds. (R. C134) Doe was then followed by Detective Sintic and another police agent to the area of 30th Steet and Chicago Road, South Chicago Heights, Illinois. (R. C134) There, Detective Sintic and the other police agent observed Richard Claus enter Doe's vehicle. (R. C134) The vehicle was then followed to the area of Park and Isa Avenues, in Chicago Heights, Illinois. (R. C134) At this location, Claus exited the vehicle and was followed on foot by Detective Sintic to 1315 Park Avenue. (R. C134-135) The other police agent maintained an observation on Doe's vehicle. (R. C135)

Detective Sintic observed Claus enter the home at 1315 Park Avenue. (R. C135) Several minutes later, Detective Sintic



observed Claus exit the home and walk directly back to Doe's vehicle. (R. C135) Thereafter, a continued observation was kept on Doe's vehicle to the area of 31st and Green Streets, Steger, Illinois, where Claus exited Doe's vehicle. (R. C135) Doe was then followed to the meet location. (R. C135)

At the meet location, Doe gave Detective Sintic a tin foil packet containing a beige powder substance which a field test revealed to be heroin. (R. C135) Detective Sintic again had Doe's person and vehicle searched and found both free of money and contraband. (R. C135) Doe advised Detective Sintic that Claus told Doe to call anytime Doe needed more, further advising Doe that Cesario Zartuche had a good supply of heroin which Claus referred to as "China White." (R. C135)



Two other controlled purchases were conducted on October 6, 1982, and on October 15, 1982. On each occasion, the circumstances of the purchases were substantially similar to the October 5, 1982 purchase. (R. C135-137) After the October 6 purchase, Doe informed Detective Sintic that Richard Claus advised Doe that the heroin purchased was the same as the previous "China White" (heroin), and that Cesario Zartuche had 101 hiding places for his dope in his home. (R. C136) After the October 15 purchase, Doe informed Detective Sintic that Richard Claus advised Doe that he (Claus) would have grams and half grams on hand, but would have to get larger quantities from Zartuche. (R. C137)

On October 15, 1982, Detective Sintic received a report from the Northeastern Metropolitan Enforcement Group (NEMEG), a local drug enforcement group, that on July

27, 1982, a special agent of NEMEG purchased a quantity of heroin from Richard Claus. (R. C137-138) On that occasion, according to the report, Claus met with the NEMEG agent in the area of Chicago Heights, Illinois, and informed the agent that he had to obtain the "stuff" (heroin), from his "man", who lived in the area. (R. C138) Thereafter, Claus was followed by other NEMEG agents and observed entering the home located at 1315 Park Avenue while the first NEMEG agent waited at an agreed location for Claus to return with the heroin. (R. C138)

The complaint for a search warrant further related that Detective Sintic confirmed information that on February 7, 1978, the Cook County Sheriff's Police executed a search warrant at 1315 Park Avenue, Chicago Heights, Illinois, which resulted in the arrest of Cesario Zartuche,

charged with possession of heroin and cannibis. (R. C138)

The search warrant was signed by a trial judge and executed by Detective Sintic on October 16, 1982. (R. C131-132) The search of Petitioner's home resulted in the seizure of approximately 41.3 grams of heroin, approximately 11.2 grams of cocaine, United States currency, various forms of proof of residency, and other items alleged to be contraband. (R. 106-112; R. C132)

Subsequently, Petitioner was arrested and indicted for possession of more than fifteen grams of heroin with intent to deliver and possession of more than ten grams but less than thirty grams of cocaine with intent to deliver in violation of Ill. Rev. Stat. 1981, ch. 56 $\frac{1}{2}$, sections 1401 (a)(1)-1408 and 1401 (b)-1408, respectively. (R. C146-7a). Prior to trial,

Petitioner filed a motion to suppress the search warrant, claiming that the complaint for the search warrant did not establish probable cause. (R. C144-145) The motion was heard and denied by an Illinois trial judge on May 5, 1983. (R. 1-38) After a stipulated bench trial, Petitioner was found guilty of the aforementioned charges and sentenced to concurrent seven-year terms of imprisonment and was fined \$2,000 and assessed \$70 in court costs. (R. 102-121)

Petitioner's convictions were subsequently affirmed by the Illinois Appellate Court. The Illinois Appellate Court, applying Illinois v. Gates and decisions of the Illinois courts, concluded that under the totality of the circumstances there was a substantial basis for the trial court's finding of probable cause. The Illinois Appellate Court subsequently denied Peti-

tioner's petition for rehearing. Petitioner's petition for leave to appeal to the Illinois Supreme Court was denied and now Petitioner seeks relief from this Court on a writ of certiorari.

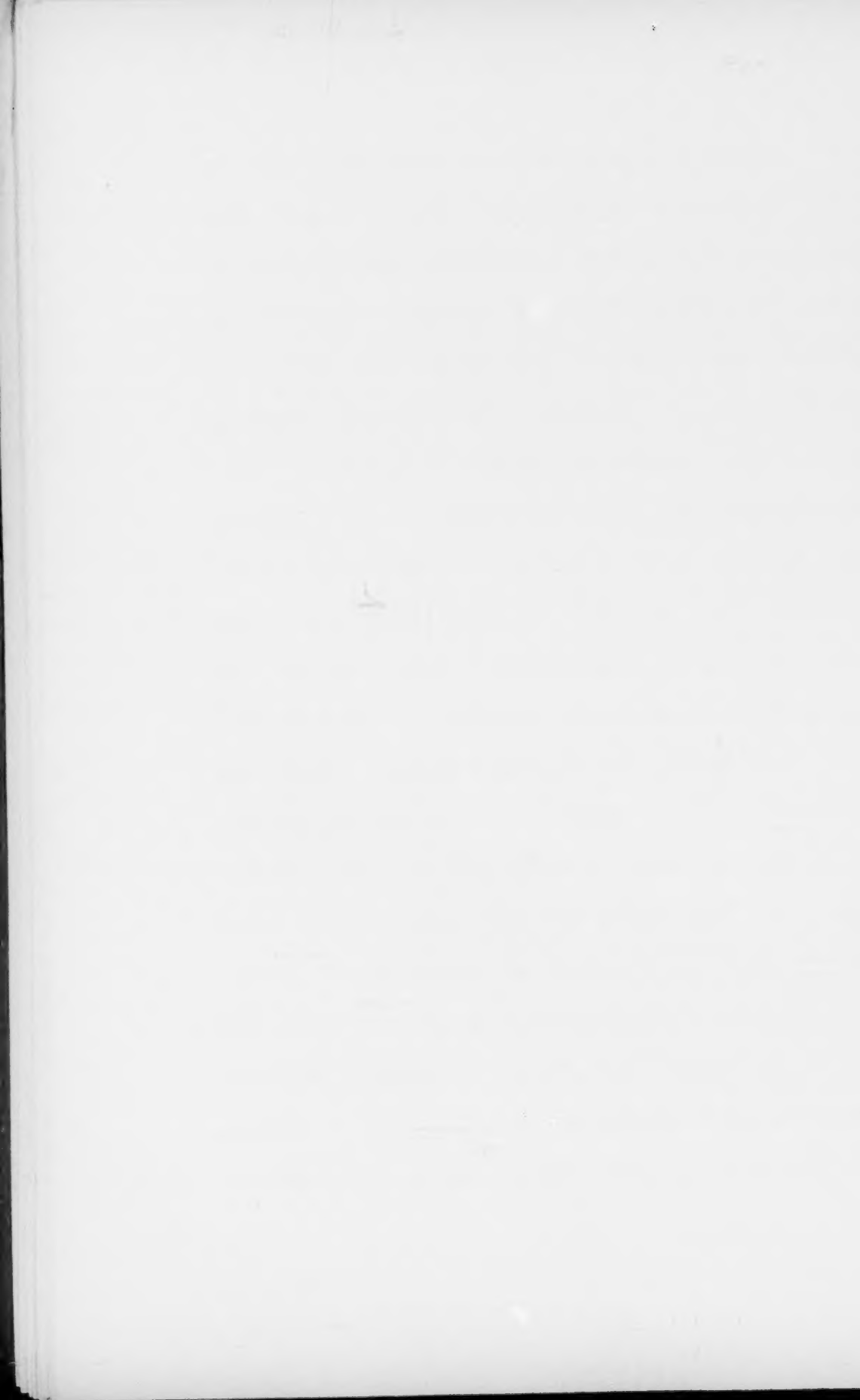


REASON FOR DENYING THE WRIT

THE ILLINOIS APPELLATE COURT PROPERLY APPLIED THIS COURT'S DECISION IN ILLINOIS V. GATES, 462 U.S. 213, 104 S.Ct. 2085 (1983), IN CONCLUDING THAT UNDER THE TOTALITY OF THE CIRCUMSTANCES THERE WAS A SUBSTANTIAL BASIS FOR THE TRIAL COURT'S FINDING OF PROBABLE CAUSE WHERE THE INFORMATION PROVIDED BY THE INFORMANT WAS SUBSTANTIALLY CORROBORATED BY INDEPENDENT POLICE INVESTIGATION WHICH INCLUDED THREE CONTROLLED DRUG PURCHASES AT PETITIONER'S HOME, A REPORT FROM A LOCAL DRUG ENFORCEMENT AGENCY INDICATING THAT THE INFORMANT WAS OBSERVED ENTERING PETITIONER'S HOME PRIOR TO ANOTHER RECENT CONTROLLED DRUG PURCHASE, AND INFORMATION THAT PETITIONER HAD PREVIOUSLY BEEN ARRESTED ON A DRUG-RELATED CHARGE AFTER A SEARCH WARRANT WAS EXECUTED IN HIS HOME.



After his convictions were affirmed by the Illinois Appellate Court, and his petition for leave to appeal was denied by the Illinois Supreme Court, Petitioner filed the instant petition for Writ of Certiorari. Herein, Petitioner asserts that the Illinois Appellate Court misconstrued this Court's decision in Illinois v. Gates, 462 U.S. 213, 103 S.Ct. 2317 (1983). In support of his assertion that the Illinois Appellate Court erred in upholding a warrant issued to search him and his home, Petitioner argues that the search warrant complaint failed to establish either the reliability of the informant, or the basis for the conclusions that Petitioner sold drugs at his home. (Pets. Br. 11-12) Respondents maintain that the Illinois Appellate Court properly applied this Court's decision in Illinois v. Gates in concluding that there was a substantial



basis for the trial court's finding of probable cause, and, therefore, Petitioner is not entitled to a writ of certiorari on this issue.

The Illinois Appellate Court relied upon this Court's decision in Illinois v. Gates, 462 U.S. 213, 103 S.Ct. 2317 (1983), in concluding that there was a substantial basis for the trial court's finding of probable cause. In Gates, this Court abandoned the rigid "two-pronged" test for establishing probable cause based on an informant's tip that had been articulated in Aguilar v. Texas, 378 U.S. 108, 84 S.Ct. 1509 (1964), and Spinelli v. United States, 393 U.S. 410, 89 S.Ct. 584 (1969). In place of the two-pronged Aguilar-Spinelli test, the Court adopted the "totality of the circumstances" analysis "which permits a balanced assessment of the relative weights of all the various indicia of re-



liability (and unreliability) attending an informant's tip." Illinois v. Gates, 462 U.S. 213, 234, 103 S.Ct. 2317, 2329-30 (1983). The Court in Gates reasoned that informant's tips are simply too diverse to effectively be measured with a set of rigid legal rules. "[T]he two-pronged [Aguilar-Spinelli] test has encouraged an excessively technical dissection of informant's tips, with undue attention being focused on isolated issues that cannot sensibly be divorced from the other facts presented to the magistrate." Id. at 234-235, 103 S.Ct. at 2330. For this reason the Court in Gates held that a magistrate should simply look to the totality of circumstances when assessing an affidavit that relies on information from an informant:

"The task of the issuing magistrate is simply to make a practical, commonsense decision



whether given all the circumstances set forth in the affidavit before him, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place."

Id. at 238, 103 S.Ct. at 2332.

The Court in Gates thus reaffirmed that the reliability of hearsay statements, as measured by the informant's veracity and basis of knowledge, is highly relevant. Scrutiny of these factors, the Court observed, is to guide the magistrate who must make a probable cause determination. Id. at 230-31 n.6, 103 S.Ct. at 2328 n.6. Yet, as this Court later emphasized, Gates "did not merely refine or qualify the 'two-pronged' [Aguilar-Spinelli] test" but instead abandoned it in favor of a "to-



tality of the circumstances analysis." Massachusetts v. Upton, 466 US. 727, 732, 104 S.Ct. 2085, 2087 (1984) (per curiam).

Additionally, the Court in Gates reaffirmed other methods established in prior opinions for evaluating an informant's tip. Specifically, the Court again recognized that probable cause could be found where the details of the informant's information are corroborated by independent police investigation. Illinois v. Gates, 462 U.S. 213, 241-45, 103 S.Ct. 2317, 2334-35 (1983). In fact, the Court in Gates found probable cause based on corroboration of an anonymous letter, even though it appears neither veracity nor basis of knowledge was otherwise established.

This Court has also described the duty of a reviewing court when a challenge is raised as to a trial court's finding that

probable cause existed. The Court has stated that a reviewing court is not to conduct a "de novo probable cause determination" but instead is simply to decide "whether the evidence viewed as a whole provided a 'substantial basis' for the [issuing judge's] finding of probable cause." Massachusetts v. Upton, 466 U.S. 727, 728, 104 S.Ct. 2085, 2085-86 (1984) (per curiam); Illinois v. Gates, 462 U.S. 213, 238-39, 103 S.Ct. 2317, 2332 (1983).

In the present case, the Illinois Appellate Court properly applied this Court's decision in Illinois v. Gates to the facts, and properly concluded that under the totality of the circumstances there was a substantial basis for the trial court's finding of probable cause. The Illinois Appellate Court found, based on Illinois v. Gates and decisions of the Illinois courts, that a substantial basis



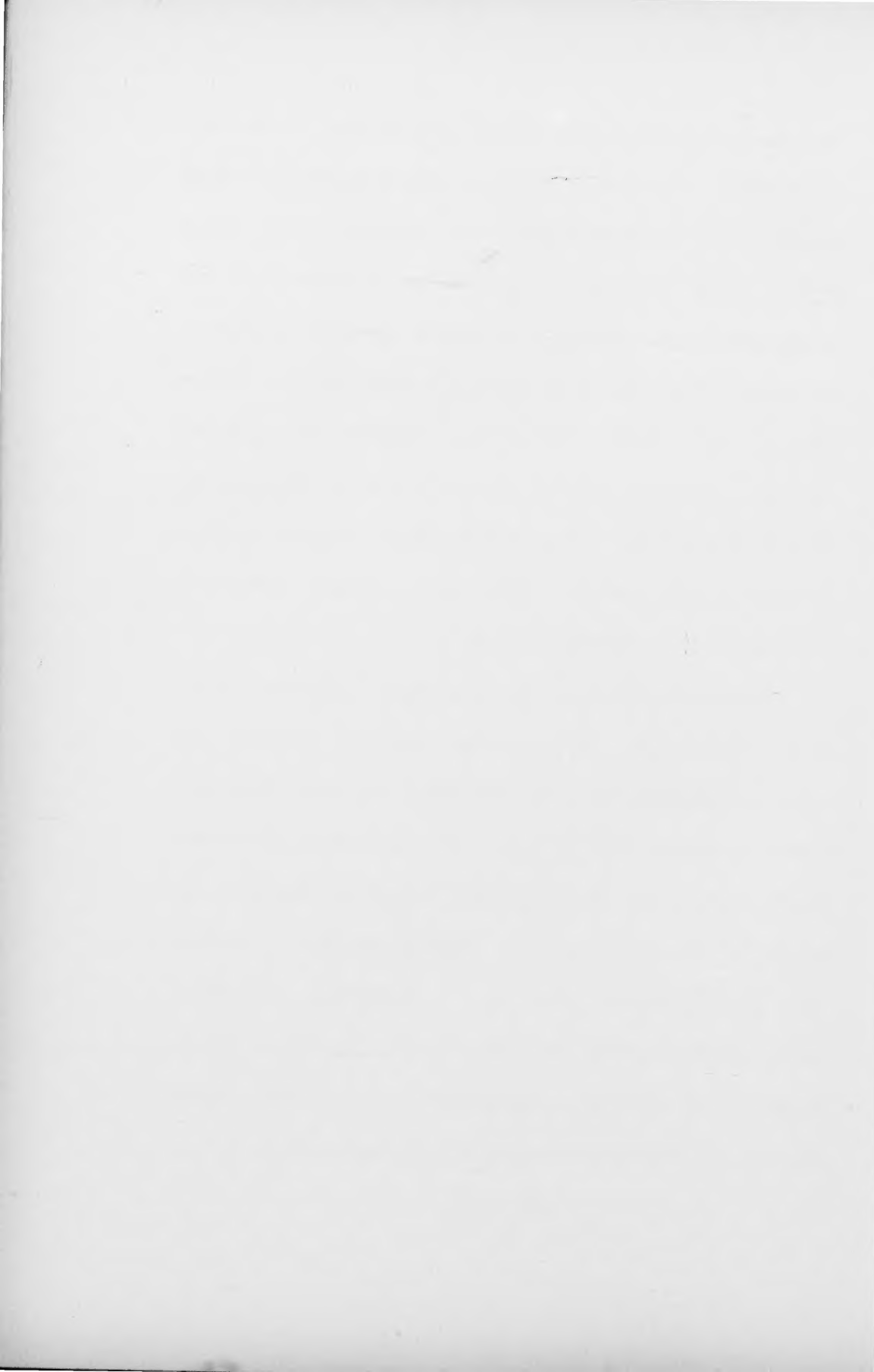
for the trial court's finding of probable cause existed where the information provided by the informant, Claus, was substantially corroborated by independent police investigation.

As the facts in the present case reveal, after Claus informed Doe, an anonymous informant, that Petitioner was providing him with the heroin he had sold to Doe, this information was corroborated by three controlled purchases. At the time of each of these purchases, prior to tendering the drugs to Doe, Claus was seen entering Petitioner's home which further corroborated the information received from Claus. (R. C134-137) Additional corroboration was provided by a report from the Northeastern Metropolitan Enforcement Group (NEMEG), a local drug enforcement agency, which indicated that Claus was observed by NEMEG agents entering Petitioner's home prior to



another controlled drug purchase. (R. C. 137-138) Finally, Claus' statements to Doe were also corroborated by information that Petitioner had been previously arrested on drug-related charges after a search warrant was executed in his home in February, 1978. (R. C 137-138) Clearly, under the facts in the present case, the Illinois Appellate Court properly concluded that there was a substantial basis for the trial court's finding of probable cause.

Nevertheless, Petitioner argues that the Illinois Appellate Court erred in upholding the search warrant in the instant case because there was no reliable factual basis that he was either selling drugs, or that he even lived on the premises located at 1315 Park Avenue. However, Claus' statements that he was getting the drugs from Petitioner, coupled with the substantial corroboration by independent

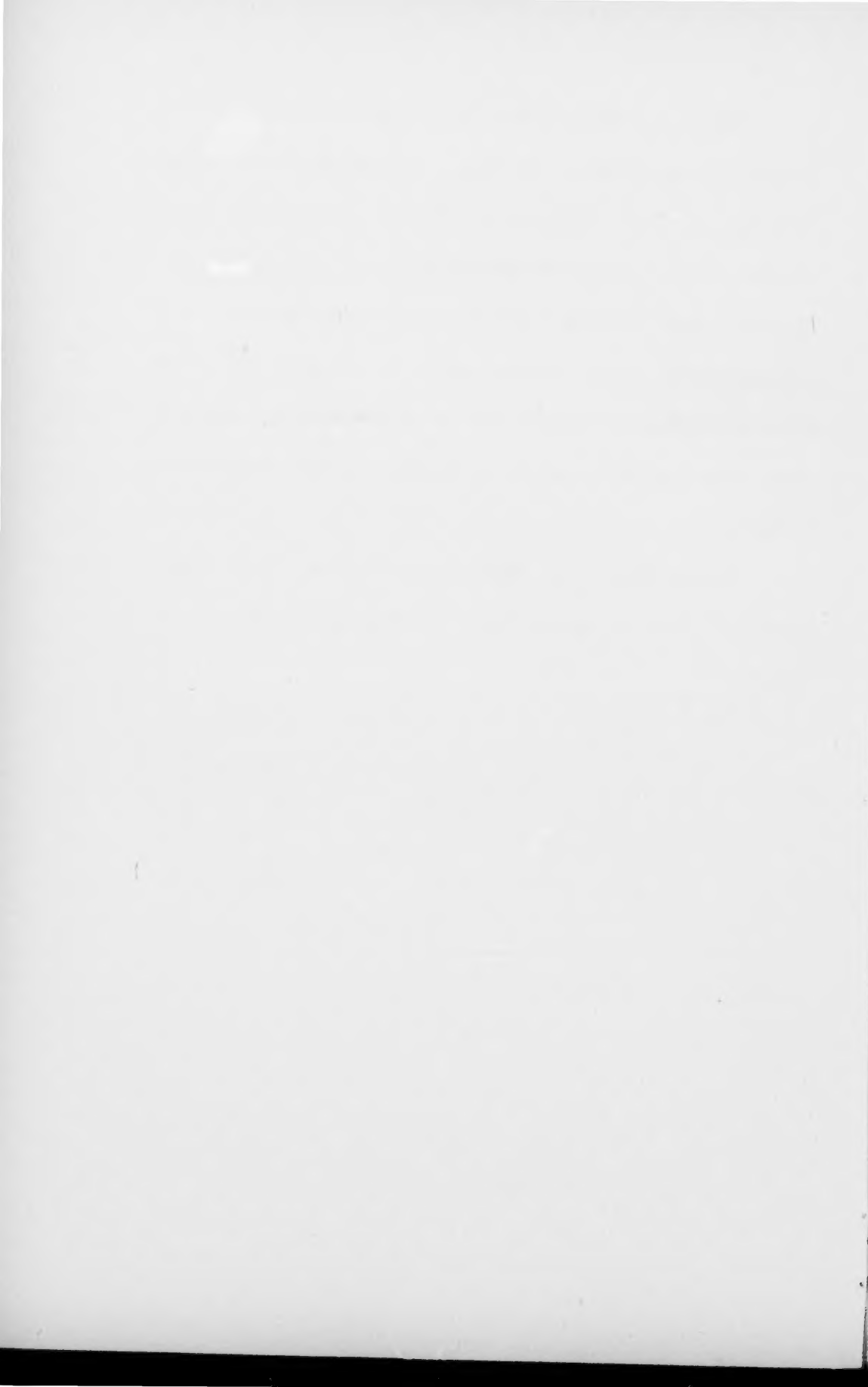


police investigation, made it reasonable to conclude that Petitioner was, in fact, the source of the drugs. Clearly, Petitioner's arguments ignore the well-settled distinction between the quantum of proof necessary to obtain a criminal conviction, and that which is required to show probable cause for an arrest or search. Only the probability of criminal activity, and not proof beyond a reasonable doubt, is the standard for assessing probable cause. Spinelli v. United States, 393 U.S. 410, 419, 89 S.Ct. 584, 590 (1969). Probable cause deals with probabilites which "are not technical; they are factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act" Brinegar v. United States, 338 U.S. 160, 69 S.Ct. 1302, 1310 (1949).



Thus, Petitioner's convictions were properly affirmed by the Illinois Appellate Court. The Illinois court properly applied this Court's decision in Illinois v. Gates and other Illinois decisions, in concluding that under the totality of the circumstances there was a substantial basis for the trial court's finding of probable cause.

Accordingly, Petitioner is not entitled to a writ of certiorari on this issue.



CONCLUSION

For the foregoing reasons, Respondent respectfully prays that this Honorable Court deny the instant petition for Writ of Certiorari.

Respectfully submitted

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